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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,959	12/18/2001	John William Artley		7183

7590

03/17/2005

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EXAMINER

BOYD, JENNIFER A

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 03/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/022,959

Applicant(s)

ARTLEY ET AL.

Examiner

Jennifer A Boyd

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 12, 2005 has been entered. The Applicant's Amendments and Accompanying Remarks, filed January 12, 2005, have been entered and have been carefully considered. Claim 1 is pending. The Examiner withdraws the previously set forth rejection as detailed in paragraph 3 dated July 12, 2004. It should be noted that the rejection is withdrawn only because the Examiner has decided to apply the patent to Soane in place of the US Application Publication to Soane. The invention as currently claimed is unpatentable for reasons herein below.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Response to 37 CFR 1.131 Declaration***

3. The Declaration filed on January 11, 2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the Soane reference. According to MPEP 715, "The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference

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coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. **Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration or their absence satisfactorily explained.**" The Applicant has failed to furnish original exhibits or records or has failed to satisfactory explain their absence.

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claim1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4 – 5, 8, 13, 26 and 31 of copending Application No. 11/005,083. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to a method of manufacturing a substrate treated with polyethylene glycol comprising exposing the fabric to the polyethylene glycol formulation, heating and curing at a temperature between 220 and 220 °F and then neutralizing the textile.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

6. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Soane (US 6,607,994).

Soane et al. is directed to a nanoparticle-based permanent treatment for textiles (Title). Soane teaches that a solution comprising nanoparticles which are formed by contacting an agent or other payload with a set of monomers, oligomers or polymers (column 3, lines 1 – 40). Soane teaches that the monomers, oligomers, or polymers may be optionally copolymerized with soft or rubber monomers or polymers (column 4, lines 55 – 60). Soane teaches that the soft or rubber monomer or polymer can be polyethylene glycol (column 5, lines 1 – 5). The Examiner equates the soft or rubber monomer or polymer of polyethylene glycol to Applicant's "polyethylene glycol". Soane teaches that in one embodiment that the textile-reactive payload nanoparticles are suspended in an aqueous solution that contains a linker molecule (e.g., a compound having two or more N-methylol groups, such as DMDHEU or DMUG) (column 10, lines 65 – 69 and column 11, lines 1 – 15). The Examiner equates the linker molecule compound of DMDHEU to Applicant's "resin". Soane teaches that a catalyst may also be included such as a Lewis acid catalyst (column 11, lines 1 – 15). The Examiner equates the Lewis acid catalyst to Applicant's "acid catalyst". The solution is exposed to a variety of different substrates such as fabrics and textiles made of natural or synthetic fibers (columns 9 and 10). It should be noted that it is known that the application of a solution to a substrate would result in a wet substrate because a solution inherently contains water or a liquid substance. Soane teaches applying the solution to

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the fabric by soaking, spraying, dipping, fluid flow or padding and then subsequently drying (column 10, lines 50 – 65). Soane notes that the binding reactions may occur before, during or after the drying process (column 11, lines 1 – 15). Soane teaches that the process temperature is about 5 to 180 °C (41 – 356 °F) (column 11, lines 25 - 35), which overlaps Applicant's requirement of not exceeding about 220 °F. Soane teaches that the pH should be kept neutral to basic when treating cotton fabric (column 11, lines 45 – 50). It should be noted that neutral indicates a pH of 7 while a basic indicates a pH of greater than 7 both of which overlap Applicant's claimed range.

### ***Response to Arguments***

7. Applicant's arguments filed January 11, 2005 have been fully considered but they are not persuasive.

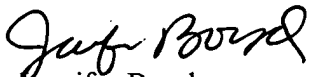
8. In response to Applicant's argument that the submitted Declaration would remove Soane reference from consideration as prior art, the Examiner submits that the rejection stands because the Declaration is ineffective. The Declaration is ineffective because the Applicant has failed to provide evidence to support the conception date of July 20, 1999 or has failed to satisfactorily explain the absence of evidence.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jennifer Boyd  
March 8, 2005

  
TERREL MORRIS  
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TECHNOLOGY CENTER 1700